



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL LAT OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Should the landlord be ordered to comply with the Act and the tenant authorized to change the locks of the rental unit?

Background & Evidence

The tenant resides in an 11 unit apartment building. The landlord served the tenant with a 2 Month Notice on June 5, 2017.

On behalf of the landlord, the landlord's son testified that he intends to move into the rental unit. He testified that he works 3 blocks away and from his current residence it is a 50-60 minute commute to work. He also manages the 11 unit apartment building.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant submits that she has recently raised concerns with trafficking and

vandalism in the area. Her car has been broken into and she also suspects someone put some type of chemical under her door which made her sick. She has filed a report with the police who are conducting an investigation. She has also notified the landlord but no actions have been taken. She submits that rather than take appropriate steps to rectify and address the security concerns, the landlord has responded by issuing her with a Notice to End Tenancy. The tenant submitted a warning letter she received from the landlord dated April 1, 2017 in which she was advised to make amends with other tenants in the building or as an alternative seek more suitable accommodation. The tenant also argued that the landlord's son frequently stays overnight at the building in the manager's unit. She testified that his car is always parked overnight outside the building.

The landlord's son testified that the manager's unit is just a boiler room and he does not have any place to stay in the building. He testified that his car is left overnight at the building when he needs to go to the airport and is away on vacation.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has submitted testimony and evidence calling into the question the good faith intention of the landlord's son to occupy the rental unit. The tenant submitted a warning letter issued to her by the landlord just 2 months prior to the Notice to End

Tenancy. In this warning letter, the landlord suggested the tenant make amends with other tenants or seek alternative accommodation. I find this and the tenants testimony with respect to her concerns raised with respect to safety issues is sufficient to call the landlord's intent into question.

I find the landlord provided insufficient evidence to make a finding that the landlord's son truly intends to occupy the rental unit or that it does not have an ulterior motive for ending the tenancy. Other than the landlord's son's testimony that he intends to move into the rental unit as it is closer to his work, the landlord provided no other evidence in support of this or to dispute the tenant's claims of an ulterior motive. As such, I allow the tenant's application to cancel the landlord's 2 Month Notice.

The tenant's application for the landlord to comply with the Act and to change the locks to the rental unit are dismissed as the tenant did not provide any evidence that the landlord has not complied with the Act or entered the rental unit not in accordance with the Act.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated June 5, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2017

Residential Tenancy Branch